

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art, (AAPA), specification, page 1, lines 22 through page 2, lines 17, in view of Kingman, 2,386,900, as set forth in the previous Office action.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art, (AAPA), specification, page 1, lines 22 through page 2, lines 17, in view of Kingman, 2,386,900 and Hays, 2,553,254. Please refer to the rejection above, set forth in the previous Office action, for the discussion of the teachings of AAPA and '900. Further, AAPA does not disclose the other one of the opposite edges, when viewed macroscopically before the sanding block becomes worn, is a curved edge and wherein, when viewed macroscopically before the sanding block becomes worn, the radius of one curved edge being substantially equal to the radius of the other curved edge. '254, figures 1 and 3, teaches that the radius of each curved edge is substantially equal to the radius of the other curved edge. It would have been obvious to one of ordinary skill to have provided AAPA with substantially equal radii as taught by '254, because without further evidence of the criticality of the shape of the

sanding block, a change in shape would be an obvious matter of design choice, In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Response to Arguments

4. Applicant's arguments filed 28 November 2011 have been fully considered but they are not persuasive. Please refer to the response to arguments in the previous Office action. Applicant again argues that AAPA, used to work drywall, and Kingman, a kitchen scrubber, are not analogous, and that the examiner's rational is based on improper hindsight. The examiner strongly disagrees. In response to applicant's argument that Kingman is nonanalogous art, it has been held that a prior art reference must either be ***in the field of applicant's endeavor*** or, if not, ***then be reasonably pertinent to the particular problem with which the applicant was concerned***, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both tools are abrasive tools, used to remove material from a workpiece. There is no impermissible hindsight in this rational, applicant cannot reasonably argue that Kingman is NOT an abrasive tool for removing material from a workpiece. Further, both reference are reasonably pertinent to the particular problem with which applicant was concerned, removing material from a workpiece without damaging the workpiece, as set forth in the Response to Arguments in the previous Office action.

5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Here, the examiner believes that applicant has misinterpreted the examiner's argument. The examiner showed that both AAPA and Kingman were reasonably relevant to the particular problem with which applicant was concerned, in that both applicant's disclosed invention and Kingman are both concerned with preventing damage to the workpiece being treated, and did not use impermissible hindsight.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAURINA RACHUBA whose telephone number is

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(571)272-4493. The examiner can normally be reached on Monday-Thursday, 6:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571 272 4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Rachuba/
Primary Examiner, Art Unit 3727